

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of

**Application by Verizon New England Inc., Bell
Atlantic Communications, Inc., (d/b/a Verizon
Long Distance), NYNEX Long Distance Company
(d/b/a Verizon Enterprise Solutions), Verizon
Global Networks Inc., and Verizon Select
Services Inc., for Authorization to Provide
In-Region, InterLATA Services in Rhode Island**

CC Docket No. 01-324

**OPPOSITION OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES**

The Association of Communications Enterprises (ASCENT”),¹ through undersigned counsel and pursuant to Public Notice, DA 01-2746 (released November 26, 2001), hereby opposes the application ("Application") filed by Verizon New England Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc.,(collectively "Verizon") for authority to provide in-region, interLATA service in the State of Rhode Island, pursuant to Section 271 of the Communications Act of 1934 (the “Act”), as amended by the

¹ ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States.

Telecommunications Act of 1996.² As ASCENT will demonstrate herein, the rates charged by Verizon for use of unbundled network elements (“UNE”) stand as a substantial barrier to UNE-based competition in Rhode Island. Verizon, accordingly, has not satisfied “the ultimate burden of proof that its application satisfies all of the requirements of section 271,”³ specifically, Competitive Checklist Item No. 2, and thus, should not “be rewarded with section 271 authority to enter the long distance market” in Rhode Island.⁴

Use by competitive providers of the UNE-Platform in Rhode Island lags far behind, on both an absolute and percentage basis, use of the UNE-Platform by competitive providers in New York.⁵ The reason for the limited use of the UNE-Platform in Rhode Island is manifest. In order to serve residential customers in Rhode Island, a competitive local exchange carrier (“LEC”) utilizing the UNE-Platform will incur carrier costs -- *i.e.*, costs paid to Verizon for unbundled network access -- roughly 35 percent higher than Verizon charges its retail customers for its unlimited local calling service offering. Hence, without consideration of such other costs of doing business as marketing, customer service, and billing, not to mention salaries and other general and administrative costs, use by competitive providers of the UNE-Platform in Rhode Island to serve residential customers is foreclosed.

² 47 U.S.C. § 271.

³ Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), 15 FCC Rcd. 3953, ¶ 44 (1999) (*subsequent history omitted*).

⁴ Id. at ¶ 15.

⁵ Hearing Transcript, Review of Verizon-Rhode Island Section 271 Filing in Compliance with Telecommunications Act of 1996, Docket No. 3363, page 43 (RIPUC October 15, 2001).

ASCENT acknowledges that the Commission has held that “[t]he Act requires that . . . [it] review whether . . . [UNE] rates are cost-based, not whether a competitor can make a profit by entering the market.”⁶ But the concerns voiced by the Commission in so concluding – *i.e.*, that “[c]onducting a profitability analysis would require [the Commission] to consider the level of a state’s retail rates . . . [and necessitate] a determination of what a ‘sufficient profit margin’ is”⁷ – are not implicated when carrier costs far exceed retail prices. The issue in Rhode Island is not whether an adequate profit margin exists to allow for use of the UNE-Platform. Rather, the issue in Rhode Island is whether Verizon can be deemed to have satisfied Competitive Checklist Item No. 2 when the prices at which it makes UNEs available effectively prevent the use of the UNE-Platform by competitors in serving the residential segment of the market. The issue, hence, is not adequacy, but impossibility.

⁶ Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts (Memorandum Opinion and Order), 16 FCC Rcd. 8988, ¶ 41(2000) (subsequent history omitted).

⁷ Id.

ASCENT submits that Competitive Checklist Item No. 2 cannot be deemed to have been satisfied when UNE pricing renders impossible the use of the UNE-Platform as a means of providing a local service alternative to a significant segment of the market, and a market cannot be deemed to be irreversibly open to competition if competitors are effectively denied the option of using one of the three coequal entry strategies mandated by Congress.⁸ Congress charged the Commission with removing not only “statutory and regulatory barriers to entry into the local exchange and exchange access markets,” but also “the most significant economic impediments to efficient entry into the monopolized local market.”⁹ The Commission has recognized that “the ability of requesting carriers to use unbundled network elements, including various combinations of unbundled network elements, is integral to achieving Congress’ objective of promoting rapid competition to all consumers in the local telecommunications market.”¹⁰

It belabors the obvious to suggest that reliance upon the UNE-Platform as a means of providing a competitive service alternative is foreclosed when the cost of the UNEs exceeds the price of the incumbent’s retail service offering. Denial of access to the UNE-Platform through use of such a pricing stratagem is no less effective than an incumbent’s refusal to provide the operations support systems (“OSS”) necessary for competitors to access UNEs. And the Commission has, on any number of occasions, denied applications for in-region, interLATA authority when OSS access to UNEs was shown to be inadequate.¹¹

⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 12 (1996) (*subsequent history omitted*).

⁹ Id. at ¶¶ 10 - 11.

¹⁰ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Third Report and Order), 15 FCC Rcd. 3696, ¶ 5 (1999) (*subsequent history omitted*).

¹¹ See, e.g., Application of Bell South Corporation, BellSouth Telecommunications, Inc., and

BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd. 20599 (1998) (*subsequent history omitted*); Application of Bell South Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended , to Provide In-Region, InterLATA Services in South Carolina (Memorandum Opinion and Order), 13 FCC Rcd. 539 (1997) (*subsequent history omitted*).

Exacerbating the problem in Rhode Island, the pricing of UNEs above the retail price of service results not from artificially low retail pricing, but from inflated UNE rates. Verizon acknowledges that loop costs in Rhode Island are only 15 percent higher than loop costs in New York and that the costs of local switching in Rhode Island exceed the costs of local switching in New York by only 13 percent.¹² Yet the rates assessed by Verizon in Rhode Island for local loops and local switching exceed by a margin far larger than 13 percent or 15 percent the rates recommended by the Administrative Law Judge tasked by the New York Public Service Commission with undertaking a “comprehensive examination of the unbundled network element (UNE) rates of Verizon New York Inc. f/k/ Bell Atlantic - New York, as set in the First Network Elements Proceeding.”¹³

¹² Application at 91 - 92.

¹³ Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements (Recommended Decision), Case 98-C-1357, pg. 1 (May 16, 2001).

In approving Verizon's application to originate interLATA traffic in Massachusetts, the Commission recognized that the New York Public Service Commission was "actively investigating UNE rates and may modify those rate to reflect changed market conditions, technologies, and information."¹⁴ The presiding Administrative Law Judge has now concluded that investigation, rejecting in so doing Verizon's claims that its "existing rates are reasonable, TELRIC-based, and pro-competitive (indeed . . . too low)," and identifying substantially reduced UNE prices predicated upon a "suitably adjusted" Verizon-sponsored cost study.¹⁵ The resultant recurring charges recommended by the Administrative Law Judge are substantially less than those currently charged by Verizon in either New York or Rhode Island. Thus, for example, the recommended New York rates for local switching range from less than one third to slightly more than half, depending upon the point of origination and/or termination, of the state wide local switching rate levied by Verizon in Rhode Island. Recommended rates for local loops in New York likewise exceed local loop rates in Rhode Island by an average margin of more than one third.¹⁶ The differential between Verizon's Rhode Island UNE rates and the rates recommended in New York thus exceed the

¹⁴ Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts (Memorandum Opinion and Order), 16 FCC Rcd. 8988 at ¶ 29.

¹⁵ Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements (Recommended Decision), Case 98-C-1357 at pp. 33 - 35, Appx. C.

¹⁶ Id. at Appx. C. By way of contrast, the Commission sanctioned Verizon's Massachusetts local loop and local switching charges because the differential by which Massachusetts charges exceeded New York rates was less than the differential by which Massachusetts charges exceeded New York costs. Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts (Memorandum Opinion and Order), 16 FCC Rcd. 8988 at ¶ 40.

acknowledged cost differences between Rhode Island and New York by upwards to three times.¹⁷

ASCENT acknowledges that the Commission has declared in assessing prior applications for in-region, interLATA authority, that it “will not conduct a *de novo* review of a state’s pricing determinations.”¹⁸ The Commission, however, has also committed to reject an application if “basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”¹⁹ Here, the decision of the Administrative Law Judge who conducted the “comprehensive reexamination” of Verizon’s UNE pricing in New York provides tangible proof that Verizon’s UNE rates in Rhode Island “fall[] outside the range that the reasonable application of TELRIC principles would produce.”²⁰ Implicit in the Commission’s declaration that where “the percentage difference between the applicant state’s rates and the benchmark state’s rates does not exceed the percentage difference between the applicant state’s costs and the benchmark state’s costs, as predicted by the USF model,” the applying carrier will be deemed to have “met its burden to show that its rates are TELRIC-compliant,”²¹ is the notion that where the applicant state’s rates exceed the benchmark state’s rates by a margin far in excess of the percentage by which the applicant state’s costs exceed the benchmark state’s costs,

¹⁷ In that Verizon relied upon New York switching rates in pricing switching in Massachusetts, modification of local switching charges in New York would likely “undermine Verizon’s reliance on those rates in Massachusetts and its compliance with the requirements of Section 271.” *Id.* at ¶ 30.

¹⁸ *Id.* at ¶ 20.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Service in Arkansas and Missouri (Memorandum Opinion and Order), CC Docket

the applying carrier rates will have failed to carry its burden of demonstrating that its rates are TELRIC-compliant.

Use of the recommended New York UNE rates in Rhode Island would produce charges that would allow competitive providers to make use of the UNE-Platform without “bear[ing] unreasonably higher costs than [the] incumbent.”²² Competitors would still have to decide whether to make use of the UNE-Platform “based on their independent determinations that they can[] turn a sufficient profit in the market.”²³ But competitors would not, as they are now, be prevented from

No. 01-194, FCC 01-338, ¶ 57 (November 16, 2001) (*subsequent history omitted*).

²² Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts (Memorandum Opinion and Order), 16 FCC Rcd. 8988 at ¶ 42.

²³ Id.

using the UNE-Platform by pricing which constitutes no less an effective bar to such service strategy than would inadequate OSS capability.

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to deny as premature the Application filed by filed by Verizon New England Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc.,(collectively "Verizon") for authority to provide in-region, interLATA service in the State of Rhode Island, and to require, as mandated by Section 271(d)(3) of the Act, full compliance with the competitive checklist before Verizon is granted such authority.

Respectfully submitted,

**ASSOCIATION OF COMMUNICATIONS
ENTERPRISES**

By: /s/
Charles C. Hunter
Catherine M. Hannan
HUNTER COMMUNICATIONS LAW GROUP
1424 16th Street, N.W.
Suite 105
Washington, D.C. 20006
(202) 293-2500

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Its Attorneys

CERTIFICATE OF SERVICE

I, Charles C. Hunter, do hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, on the individuals list on this 17th day of December, 2001:

Laury E. Bobbish
U.S. Department of Justice
Telecommunications Task Force
Antitrust Division
1401 H Street, N.W.
Suite 8000
Washington, D.C. 20530

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, N.W.
Suite 365
Washington, D.C. 20005

Michael E. Glover
Karen Zacharia
Leslie V. Owsley
Donna M. Epps
Joseph DiBella
Verizon
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201

Luli Massaro
Commission Clerk
State of Rhode Island and Providence
Plantations Public Utilities Commission
89 Jefferson Blvd.
Warwick, Rhode Island 02888

Evan T. Leo
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Bruce P. Beausejour
Keefe B. Clemons
Verizon New England.
185 Franklin Street
Room 1403
Boston, MA 02110

/s/

Charles C. Hunter